



Minnesota Center for Environmental Advocacy

Using law, science, and research to protect Minnesota's environment, its natural resources, and the health of its people.

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December 6, 2016

Court Administrator
Ramsey County Courthouse
15 West Kellogg Boulevard, Room 600
St. Paul, MN 55102

VIA E-SERVICE

*Re: State of Minnesota ex rel., Minnesota Center for Environmental Advocacy,
Save Lake Superior Association and Save Our Sky Blue Waters vs.
Minnesota Pollution Control Agency
Ramsey County Court File No. 62-CV-16-6257*

Dear Court Administrator:

Enclosed for filing in the above-captioned matter please find:

- Notice of Voluntary Dismissal Without Prejudice
- Stipulation of Settlement, and
- Proposed Order.

Thank you.

Sincerely,

/s/ Hudson Kingston
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HK/el

Enclosures

cc: Ann E. Cohen, Esq.
Martin Edward Lehto (via U.S. Mail)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

State of Minnesota ex rel., Minnesota
Center for Environmental Advocacy,
Save Lake Superior Association and Save
Our Sky Blue Waters,

Plaintiffs,

vs.

Minnesota Pollution Control Agency,

Defendant.

**NOTICE OF
VOLUNTARY DISMISSAL
WITHOUT PREJUDICE PURSUANT
TO MINN. R. CIV. P. 41.01(a)**

Court File No. 62-CV-16-6257
Judge Shawn M. Bartsh

Pursuant to Rule 41.01(a) Minn. R. Civ. P., Plaintiffs request that this Court dismiss the above-captioned case without prejudice. Plaintiffs and Defendant have agreed to and signed a Stipulation of Settlement. This mutually agreed upon Stipulation of Settlement is attached.

Dated: December 6, 2016

/s/ Hudson Kingston
Hudson B. Kingston (#0397994)
Kevin P. Lee (#0395933)
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ATTORNEYS FOR PLAINTIFFS
MINNESOTA CENTER FOR
ENVIRONMENTAL ADVOCACY SAVE LAKE
SUPERIOR ASSOCIATION AND SAVE OUR
SKY BLUE WATERS

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Other Civil/Misc.

State of Minnesota ex rel.,
Minnesota Center for
Environmental Advocacy, Save Lake
Superior Association and Save Our
Sky Blue Waters,

Court File No. 62-CV-16-6257
Honorable Shawn M. Bartsch

STIPULATION

Plaintiffs,

vs.

Minnesota Pollution Control Agency,

Defendant.

Background

1. On November 9, 2016, the Plaintiffs Minnesota Center for Environmental Advocacy, Save Lake Superior Association, and Save Our Sky Blue Waters (“Plaintiffs”) filed a lawsuit (“Minntac MERA Action”) against the Minnesota Pollution Control Agency (“MPCA”) under Minn. Stat. § 116B.10, which provides that if a plaintiff establishes that a permit is inadequate to protect the air, water, land, or other natural resources located within the state, the district court “shall remit the parties to the state agency. . . that promulgated the . . . permit which is the subject of the action, requiring said agency. . . to institute the appropriate administrative proceedings to consider and make findings and an order on” whether the permit is inadequate to protect the air, water, land, or other natural resources. Minn. Stat. §116B.10, subd. 3.

2. In the Minntac MERA Action, Plaintiffs allege that the expired MPCA permit governing water discharges from the U.S. Steel “Minntac” facility in Mountain Iron, Minnesota (“Minntac”), is inadequate pursuant to Minn. Stat. § 116B.10, subd. 2, and seek relief as provided in Minn. Stat. § 116B.10, subd. 3.

3. On November 15, 2016, the MPCA issued a draft permit for Minntac and commenced a 30 day public comment period as required under Minn. R. 7001.0100 with the intent to issue a new permit governing surface water and groundwater pollution from the Minntac facility.

4. As a result of this action, there is an administrative proceeding that provides an opportunity for parties, including Plaintiffs, to comment and to seek a contested case hearing on all terms of the permit. Legal issues can be preserved and addressed on appeal as provided under Minn. Stat. § 115.05, subd. 11.

Stipulation

1. Following the Effective Date of this Stipulation, Plaintiffs agree that they shall dismiss their Minntac MERA Action without prejudice. In the event that, in the sole judgment of the Plaintiffs, Plaintiffs conclude that MPCA has not complied with this Stipulation or failed to issue the final permit for reasons other than legal challenges or other circumstances beyond the reasonable control of the MPCA, Plaintiffs may refile their complaint. Plaintiffs shall provide 20 days written notice to MPCA prior to refiling the Complaint so that the Parties can discuss the status of the matter. If Plaintiffs refile this action, nothing in this Stipulation shall be deemed to prevent the MPCA from filing a Motion to Dismiss asserting that the Minntac MERA Action is moot or should be dismissed on other grounds.

2. The MPCA agrees that it shall pursue issuance of a final National Pollutant Discharge Elimination System/State Disposal System ("NPDES/SDS") permit governing surface water and groundwater pollution from the Minntac tailings basin with the goal of completing all administrative proceedings and issuing a final permit within nine months of the Effective Date of this stipulation. In the event the MPCA determines that it cannot conclude such proceedings and issue a permit in a nine-month period due to legal challenges or other circumstances beyond the reasonable control of the MPCA, it shall provide Plaintiffs with a written explanation and an alternative proposed date by which the permit will be issued. Nothing in this Stipulation limits Plaintiffs' rights to reject a proposed alternative date and proceed under paragraph 1.

3. Plaintiffs retain all rights to challenge the draft permit through the administrative proceeding which commenced November 15, 2016, and, as provided under Minn. Stat. § 115.05, subd. 11, retain all rights to challenge the final agency order issuing the permit, including on the grounds that the permit does not include necessary effluent limits for sulfate, total dissolved solids, and bicarbonates, or lacks legally required limits for pollutants leading to hardness, and specific conductance water quality standard violations, and that the permit will not protect wild rice and trout stream habitat in the Dark River and Sand River, including Little Sandy Lake and Big Sandy Lake (Twin Lakes) from impairment.

4. If the MPCA enters into mediation regarding the Minntac NPDES/SDS permit with the permit-holder, U.S. Steel, it shall ensure that mediation includes Plaintiffs in the above-captioned lawsuit as parties to that mediation. This requirement shall not be construed to prevent MPCA from meeting with or communicating with U.S. Steel without Plaintiffs' participation.

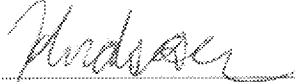
but Plaintiff MCEA shall be copied on all written communications with U.S. Steel concerning the permit, and no final permit shall be issued without Plaintiffs having first had an opportunity to meet with MPCA regarding that permit. In written communications MPCA remains subject to the Government Data Practices Act and its definitions of "nonpublic data" and "trade secret information." See Minn. Stat. § 13.37. MPCA will alert MCEA to any redaction it deems necessary under this legal duty.

5. Plaintiffs agree that MPCA does not have the authority to waive or eliminate any due process rights any party may have with regard to the draft Minntac facility NPDES/SDS permit, including the right to ask for a contested case hearing on the draft permit that is on public notice. Plaintiffs, by consenting to mediation, do not waive any such rights. Plaintiffs do not waive their right to object to the terms of the draft permit or other actions, including any requests for water quality standard changes that are pending or may be filed in relation to the Minntac facility. Plaintiffs further recognize that MPCA reserves the right to modify the Minntac permit subsequent to EPA approval of a water quality standard change.

6. MPCA agrees that, within 30 days of the Effective Date of this Stipulation, it shall pay Plaintiff's court costs in the amount of \$392.00.

7. The date of the final signature of this Stipulation shall mark the Effective Date of this Stipulation.

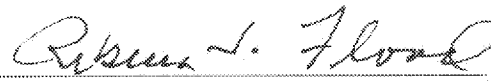
PLAINTIFFS MCEA et al.



Date 12/6/16

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DEFENDANT MPCA



Date 12/2/16

Rebecca J. Flood
Assistant Commissioner
Minnesota Pollution Control Agency

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: Civil Other/Misc.

State of Minnesota ex rel., Minnesota
Center for Environmental Advocacy, Save
Lake Superior Association and Save Our
Sky Blue Waters,

**ORDER FOR DISMISSAL
WITHOUT PREJUDICE**

Plaintiffs,

vs.

Court File No. 62-CV-16-6257
Judge Shawn M. Bartsh

Minnesota Pollution Control Agency,

Defendant.

Based on the agreement of the Parties as set out in the attached Stipulation of Settlement, this
matter is, consistent with the Stipulation, dismissed without prejudice.

It is so ordered.

Dated: _____

BY THE COURT

Judge Shawn M. Bartsh
Ramsey County District Court